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October 28, 1993

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OCT 28 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Mr. William F. Caton  
Secretary  
Federal Communications Commission  
Mass Media Services  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: GC Docket No. 92-52

Dear Mr. Caton:

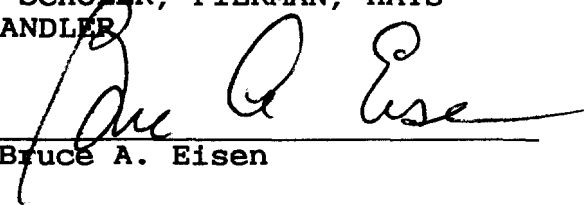
On behalf of Rex Broadcasting Corporation, there is herewith an original and 5 copies of its Reply Comments in response to the Commission's Further Notice of Proposed Rulemaking.

Should any questions arise with regard to this matter, kindly communicate directly with this office.

Respectfully submitted,

KAYE, SCHOLER, FIERMAN, HAYS  
& HANDLER

By:

  
Bruce A. Eisen

Enclosure

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## Federal Communications Commission

OCT 28 1993

WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In The Matter of )  
 )  
Reexamination of the Policy )  
Statement on Comparative )  
Broadcast Hearings )

GC Docket No. 92-52

To: The Commission

REPLY COMMENTS OF REX BROADCASTING CORPORATION

Rex Broadcasting Corporation ("Rex"), by its attorney, hereby files its reply comments in response to those parties that filed comments in the Commission's Further Notice of Proposed Rulemaking ("Further Notice") in GC Docket No. 92-52, FCC 93-363, released August 12, 1993. In support thereof, the following is shown:

Rex took a reasonably narrow position when it suggested that the Commission's proposal for a mandatory three-year holding period should be applied prospectively, if at all, so that parties who had relied upon existing Commission rules and policies to enter into contractually binding agreements would not be undercut by a rule of retroactive application. Rex cited a number of cases which, taken together, showed that it would be unfair and likely illegal to retroactively apply a three-year holding rule under such circumstances, and it also suggested that the imposition of the new rule would not greatly advance the Commission's legitimate concern to deter speculative applicants.

Rex is heartened to note that many of the parties who submitted comments similarly felt that a new holding period requirement rule, applied retroactively, would be unreasonable. Hence, such diverse commenting parties as Todd Robinson, New Paltz Broadcasting, New Miami Latino Broadcasting Corporation, the law firm of Reed, Smith, Shaw and McClay, American Women in Radio, Tucker Broadcasting Company, L.P., Station WFNN, August Communications Group, Inc., and Susan M. Bechtel have all stated, inter alia, that it would be a mistake to impose a retroactive holding requirement rule.

The United States Catholic Conference ("USCC") and the "BCFM, et al"<sup>1</sup> have supported the Commission's proposal to lengthen the holding period. Indeed, these groups would strap licensees with a holding period for a full license term so as to insure that licensees had time to learn the needs and interests of their respective communities and to translate these needs into responsive programming. Moreover, BCFM contends that the Commission's proposal should cover all licensees, not just those who have obtained their authorizations through hearing.

While Rex agrees with the arguments of these groups that broadcast licensees are public trustees with obligations to serve their communities with programming that adequately

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<sup>1</sup> BCFM is a group made up of the Black Citizens for a Fair Media, Center for Media Education, National Association for Better Broadcasting, Philadelphia Lesbian and Gay Task Force, Telecommunications Research and Action Center, D.C. Chapter of the National Association of Puerto Rican Women, and Office of Communication of the United Church of Christ.

addresses ascertained problems and needs, nevertheless, the imposition of the kind of regulation contemplated by USCC and BCFM would damage an already economically struggling industry, as set forth by several commentators. Furthermore, the conclusory nature of the USCC-BCFM comments raise a danger that the Commission would act within a vacuum because there simply is no record to show that the present holding requirement of Section 73.3597(a)(1) of the Rules is ineffective. In any event, even these commentators do not appear to have taken issue with the question of retroactivity as it was raised in the rulemaking. It should also be noted that Rex's contention concerning retroactivity did not cover existing permittees and/or licensees per se, but rather, the even narrower question of parties who had already contracted under extant law prior to the effective date of any new holding requirement rule that might be implemented.

In light of the foregoing, if the Commission is to impose a new holding period requirement under Section 73.3597(a)(1) of the Rules, such a rule should not be applied retroactively to parties who had already entered into agreements under pre-existing rules and policy.

Respectfully submitted,

REX BROADCASTING CORPORATION

By:   
Bruce A. Eisen

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**CERTIFICATE OF SERVICE**

I, Cynthia A. Harris, a secretary in the law firm of Kaye, Scholer, Fierman, Hays & Handler, do hereby certify that I have on this 28th day of October, 1993, caused the "Reply Comments of Rex Broadcasting Corporation" to be mailed, by First Class U.S. Mail, to the following:

Office of General Counsel  
Federal Communications Commission  
1919 M Street, N.W.  
Room 610  
Washington, D.C. 20554

  
Cynthia A. Harris